

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA

WILLIAM STAPLES,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. CIV-08-531-D
	)	
UNITED STATES OF AMERICA, <sup>1</sup> <i>et al.</i> ,	)	
	)	
Defendants.	)	

**ORDER**

This matter is before the Court for review of the Report and Recommendation issued by United States Magistrate Judge Doyle W. Argo on February 9, 2009 [Doc. No. 25]. Judge Argo recommends that Defendant Paul A. Kastner be dismissed but that Plaintiff, who appears *pro se*, be granted a 30-day extension of time to complete proper service of process on the United States. If the latter recommendation is adopted, Judge Argo recommends that the United States' motion to dismiss be denied without prejudice to refile should Plaintiff fail to accomplish service within the extended time period.

No timely objection to the Report and Recommendation has been filed. Instead, Plaintiff has filed motions requesting assistance in curing the defect in service found by Judge Argo, that is, procuring a copy of the summons and the complaint to be sent to the Attorney General of the United States. *See* Pl.'s Mot. Time Extension [Doc. 28]. Due to the lack of a timely objection, the Court finds that the parties have waived further review of the issues addressed in the Report and Recommendation. *See Moore v. United States*, 950 F.2d 656 (10th Cir. 1991). However, accepting as true Plaintiff's representation that he currently lacks access to materials necessary to complete service due to the conditions of his confinement at the United States Penitentiary at Leavenworth,

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<sup>1</sup> The Court adopts the recommended change in the caption, which reflects a substitution of parties.

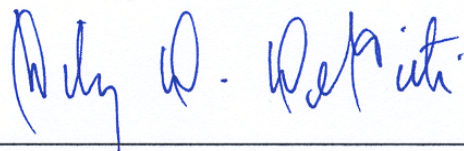
Kansas, the Court will direct the Clerk of Court to provide Plaintiff with the necessary forms to effect service and a copy of his pending complaint.

IT IS THEREFORE ORDERED that the Court adopts the Report and Recommendation [Doc. No. 25] in its entirety, and rules as follows:

- Defendant Paul A. Kastner's Motion to Dismiss [Doc. No. 22] is GRANTED, and Defendant Paul A. Kastner is DISMISSED without prejudice.
- Defendant United States of America's Motion to Dismiss [Doc. No. 21] is DENIED without prejudice to its resubmission if Plaintiff fails to effect proper service of process within the specified time limit.
- Plaintiff is granted a permissive extension of time to complete service of process on Defendant United States of America. Plaintiff shall accomplish service of process as required by Fed. R. Civ. P. 4(i)(1)(B) within thirty days after the date of this Order. The Clerk is directed to mail forms for effecting service and a copy of the Amended Complaint [Doc. No. 15] to Plaintiff with this Order.
- In view of these rulings, Plaintiff's Motions [Doc. Nos. 27, 28] are DENIED as moot.

IT IS FURTHER ORDERED that this case remains under referral to Judge Argo for further proceedings consistent with this Order and the initial case referral.

IT IS SO ORDERED this 9<sup>th</sup> day of March, 2009.



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TIMOTHY D. DEGIUSTI  
UNITED STATES DISTRICT JUDGE